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EXAMINER	
WASHINGTON, JAMARES	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/634,657	NAKAMI, YOSHIHIRO	
	Examiner	Art Unit	
	JAMARES WASHINGTON	2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10,11 and 13-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10, 11, 13-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Amendments and response received February 13, 2009 have been entered. Claims 10, 11 and 13-15 are currently pending in this application. Claims 10, 14 and 15 have been amended by this amendment. Claim 12 has been canceled. Amendments and response are addressed hereinbelow.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 10, 11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naoki Kuwata et al (US 20020030833 A1) in view of Takashi Nitta (JP 2001186297 A).

Regarding claim 10, Kuwata et al discloses an image processing method that utilizes either of shooting information representing a shooting condition of image data and image processing control information for specifying an image processing condition of the image data (Fig. 7; Following the flow chart, the image file will contain either "preset output control

information", "image output conditions (i.e., shooting information)", or both; therefore either or both will be utilized when the file is accessed) reflecting an image output property of an output apparatus (¶ [16] wherein control information includes information for controlling the image data reproduction characteristics at output device. In this case, it is possible to control reproduction characteristics according to the combination of the image data generating apparatus and the output apparatus), either of which is related to the image data (¶ [16] wherein both control information and "image file additional information" are correlated to the image data), as image processing information and thereby makes the image data subjected to a series of image processing in an image processing apparatus (¶ [16] wherein it is possible to give each type of information to the output apparatus according to the combination of the image data generating apparatus and the output apparatus), said image processing method comprising:

acquiring the image data (¶ [99] wherein the printer retrieves and reads the image file); retrieving either of the shooting information and the image processing control information (see Fig. 9 wherein depending on the image data file created in Fig. 7, either control information or image file additional information is contained in the stored image file which is retrieved (obtained) in step S216), either of which is related to the acquired image data, from an image data generating apparatus that is a separate body independent from the image processing apparatus (Fig. 4 depicts the image processing apparatus (24) acquiring the image data from either the storage (225) of the image data generating apparatus (22) which are separate body independent from one another);

in the case of successful retrieval of the image processing control information (Fig. 7 wherein output control information is available), executing the series of image processing of the

image data according to the image processing control information (see above wherein the image file contains the control information which undergoes processing in step S218 of Fig. 9).

Kuwata fails to expressly disclose while in the case of failed retrieval of the image processing control information, executing the series of image processing of the image data based on the shooting information.

Nitta, in the same field of endeavor of retrieving image processing information for processing image data (Patent Abstract of Japan), teaches while in the case of failed retrieval of the image processing control information (Abstract wherein mode information is not included in the image file), executing the series of image processing of the image data based on the shooting information (Abstract in which a photographing mode is decided from the photographing parameter of the camera).

It would have been obvious to one of ordinary skill in the art for the method as disclosed by Kuwata et al wherein the image processing can be implemented with either processing control information or shooting information, depending on the image file to utilize the method as taught by Nitta wherein in case of failed retrieval of the image processing control information, the series of image processing will be executed based on the shooting information because the modification would have constituted the mere arrangement of old elements with each performing the same function it had been known to perform, the combination yielding no more than one would expect from such an arrangement.

Therefore, subsequent to the above combination, in the case of failed retrieval of both the image processing control information and the shooting information (as taught by Nitta), executing the series of image processing of the image data according to default image processing

control information, which is general-purpose image processing information set for preset image data (¶ [102] wherein normal processing is performed when additional data and control data is not specified; see also Fig. 9 steps 214-226).

The image processing control information includes at least one of a color space matrix value used for image processing, a contrast adjustment-related parameter, and a sharpness adjustment-related parameter (¶ [83] wherein control information includes target color space contrast information), and

the shooting information includes at least one of parameters relating to an exposure correction value at the time of shooting, a light source, and white balance (¶ [71] wherein additional information (i.e., shooting information) includes shooting conditions such as shooting exposure.

Regarding claim 11, Kuwata et al discloses an image processing method in accordance with claim 10, said image processing method further comprising:

in the case of successful retrieval of the image processing information, not executing retrieval of the shooting information (see rejection of claim 10 wherein Nitta teaches image processing is performed using the control data and ignores retrieval of additional data).

Regarding claim 13, Kuwata et al discloses an image processing method in accordance with claim 10, wherein the executing the image processing to the image data is carried out by converting at least part of the shooting information into image processing control information (¶ [71] wherein additional information comprises shutter speed and exposure; It is understood that

these parameters would need to convert to control information for detailing the image processing implemented according to these camera settings) and executing the series of image processing of the image data according to the converted image processing control information (see rejection of claim 10 wherein the processing is carried out).

Regarding claim 14, Kuwata et al discloses an image processing apparatus (Fig. 6 numeral 24 primer) that utilizes either of shooting information representing a shooting condition of image data and image processing control information for specifying an image processing condition of the image data reflecting an image output property of an output apparatus (see rejection of claim 10), either of which is related to the image data, as image processing information and thereby makes the image data subjected to a series of image processing (see rejection of claim 10), said image processing apparatus comprising:

an image data acquisition unit (Fig. 6 numeral 242) that acquires the image data (see rejection of claim 10);

an image processing information retrieval unit (Fig. 6 numeral 246) that retrieves either of the shooting information and the image processing control information, either of which is related to the acquired image data by from an image data generating apparatus that is a separate body independent from the image processing apparatus (see rejection of claim 10); and

an image processing unit (Fig. 6 numeral 30 CPU; ¶ [86]) that, in the case of successful retrieval of the image processing control information, executes the series of image processing of the image data according to the image processing control information, in the case of failed retrieval of the image processing control information, executes the series of image processing of

the image data, based on the shooting information (see rejection of claim 10), and in the case of failed retrieval of both the image processing control information and the shooting information, executes the series of image processing of the image data according to default image processing control information, which is general-purpose image processing information set for preset image data (see rejection of claim 10), wherein

the image processing control information includes at least one of a color space matrix value used for image processing, a contrast adjustment-related parameter, and a sharpness adjustment-related parameter (see rejection of claim 10), and

the shooting information includes at least one of parameters relating to an exposure correction value at the time of shooting, a light source, and white balance (see rejection of claim 10).

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuwata et al and Nitta, and further in view of well known prior art.

Regarding claim 15, Kuwata et al discloses the method as rejected in claim 10.

Kuwata et al fails to disclose a recording medium in which an image processing program executing program commands, causing a computer to implement the method as disclosed in the rejection of claim 10 above.

However, it is clear from the disclosure of the reference that the processing method is carried out by an apparatus. It is well known in the image processing arts that a computer implemented method performed by an apparatus must receive "instructions or program

commands" from a program residing on a computer readable medium in order for the apparatus to be operational. (Official Notice)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a program storage medium storing a program which issues program commands, in the invention disclosed by Kuwata et al, to make the apparatus operational.

Response to Arguments

4. Applicant's arguments filed February 13, 2009 have been fully considered but they are not persuasive.

Applicant's remarks: There is no suggestion in the Kuwata reference concerning the use of shooting information instead of IPCI when the IPCI is unavailable. Further, the Kuwata reference does not at all disclose or suggest the problems caused by unavailability of IPCI.

Examiner's response: The ability of the invention as disclosed by Kuwata et al wherein either control information or shooting information can be used to process image data would afford one of ordinary skill in the art the ability to provide the system with a hierarchy structure of implementation, giving one processing priority over the other. "A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton." KSR, 550 U.S. at ___, 82 USPQ2d at 1397. "[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." Id. Support for rationale providing one with the

knowledge to implement a method in which priority is a factor may also take into account "the inferences and creative steps that a person of ordinary skill in the art would employ." Id. at ___, 82 USPQ2d at 1396. Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The "mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness." Dann v. Johnston, 425 U.S. 219, 230, 189 USPQ 257, 261 (1976). The gap between the prior art and the claimed invention may not be "so great as to render the [claim] nonobvious to one reasonably skilled in the art." Id. In determining obviousness, neither the particular motivation to make the claimed invention nor the problem the inventor is solving controls. The proper analysis is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. See 35 U.S.C. 103(a). Factors other than the disclosures of the cited prior art may provide a basis for concluding that it would have been obvious to one of ordinary skill in the art to bridge the gap. Clearly, given the options provided by Kuwata et al wherein either control information or shooting information is used to perform image processing on image data would provide a foundation for executing either processing in the manner which is claimed in the present invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the Kuwata reference does not at all disclose or suggest the problems caused by unavailability of IPCI) are

not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's remarks: The parameters used by Nitta for image processing are all related to shooting information and, consequently, these parameters do not constitute IPCI as in the claimed subject matter. As such, the Nitta reference does not provide technical support for the obviousness rejection.

Examiner's response: IPCI is clearly disclosed by the primary reference, Kuwata et al. Nitta is used as a secondary reference for teaching using either forms of processing information to carry out image processing according to the user's intentions (see rejection above). ¶ [10] of Nitta clearly explains if "photography mode information" (i.e., shooting information) is not present in the image file, the image is processed according to the photographic subject and the image data in an image file. ¶ [32] of Nitta explains that information showing the description of the photographic subject includes description of the types of colors existing in the image data which is more suited towards control information including target color space contrast information as opposed to photography mode information/shooting information. Therefore, Nitta teaches both shooting information and image processing control information.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMARES WASHINGTON whose telephone number is (571) 270-1585. The examiner can normally be reached on Monday thru Friday: 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, King Poon can be reached on (571) 272-7440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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May 4, 2009